

REMARKS

The present amendment is submitted in response to the Office Action mailed March 22, 2007. Claims 1-30 are pending, of which claims 29 and 30 have been added herein. No new issues are presented by these amendments. Prompt and favorable consideration of these claims is earnestly sought.

Claims 1-13 and 17-25 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 6-10, 12, 14, 15, and 32-50 of copending Application No. 10/484,749. Upon information and belief, Applicants respectfully submit that copending Application No. 10/484,749 is commonly owned with the present application. As such, upon the indication of the allowability of the claims of the present application, except for the double patenting rejection, should the double patenting rejection remain following the present amendment, a proper terminal disclaimer will be filed thereby obviating the obviousness-type double patenting rejection.

Claims 14-16 and 26 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 6-10, 12, 14, 15, and 32-50 of copending Application No. 10/484,749 in view of U.S. Patent No. 5,827,319 to Carlson et al. (hereinafter "Carlson"). Upon information and belief, Applicants respectfully submit that copending Application No. 10/484,749 is commonly owned with the present application. As such, upon the indication of the allowability of the claims of the present application, except for the double patenting rejection, should the double patenting rejection remain following the present amendment, a proper terminal disclaimer will be filed thereby obviating the obviousness-type double patenting rejection.

Claims 27 and 28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Carlson. Applicants respectfully submit that independent claim 27, as originally filed is allowable over Carlson because Carlson fails to disclose or suggest independent claim 27. Accordingly, the rejection of claim 27 is respectfully traversed.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131.01. Claim 27, as originally filed, recites a method of providing access through an opening in the body of a patient including making a skin incision, inserting into the skin incision a dilation assembly, having a radially expandable sheath defining a lumen and a blunt introducer disposed in the lumen, removing the blunt introducer from the lumen, and introducing an expansion assembly, having a tubular member into the lumen of the dilation assembly to radially expand the lumen of the dilation assembly and the incision in the body of the patient.

The Examiner takes the position that Carlson teaches a method of providing access through an opening in the body of a patient substantially as claimed, including, inter alia, making a skin incision, and inserting into the skin incision a dilation assembly having a radially expandable sheath defining a lumen and a blunt introducer disposed in the lumen.

Contrary to the Examiner's assertion, Carlson does not disclose the method of claim 27. Carlson does not include at least the step of making an incision in the skin prior to insertion of the dilation assembly. Instead, Carlson discloses a method of providing access to the abdomen of a patient which requires inserting a pneumoperitoneum needle through the radially expandable sleeve and engaging the sharpened distal end of the needle against the

tissue and advancing the assembly, including the sleeve and the needle, until the body of the sleeve extends across the tissue. Thus, Carlson does not disclose making an incision prior to insertion of the dilation assembly through the tissue, as recited by claim 27.

Additionally, contrary to the Examiners assertion, Carlson does not disclose the step of inserting into the skin incision a dilation assembly having a radially expandable sheath defining a lumen and a **blunt introducer** disposed in the lumen, as recited in claim 27. (see page 16, lines 6-13 of the present application). As discussed above, in contrast, Carlson discloses a pneumopertioneum needle being disposed in the lumen of the sleeve with the needle creating the initial opening into the tissue. By then forcing the sleeve, with the needle extending therefrom, through tissue the opening in the tissue may be enlarged to receive the sleeve and the body cavity may be accessed.

Therefore, Applicants respectfully submit that for at least the reasons presented claim 27 overcomes the Examiners rejection is in condition for allowance.

Since claim 28 depends from claim 27, for at least the reasons presented above, claim 28 is also believed to be in condition for allowance.

New claims 29 and 30 depend from independent claim 27. Therefore, for at least the reasons presented above, Applicants respectfully submit that claims 29 and 30 are also in condition for allowance.

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In view of the foregoing remarks, Applicants submit that all of the claims are in proper format, are patentably distinct from the prior art of record, and are in condition for allowance. The Examiner is invited to contact the undersigned at the telephone number listed below with any questions concerning this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'F. Sardone', written over a horizontal line.

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